

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

CALEB and ELIZABETH RABON,  
Plaintiffs,

V.

UNITED PROPERTY & CASUALTY  
INSURANCE COMPANY and  
NICOLAS CEPEDA,  
Defendants.

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CIVIL ACTION NO.: \_\_\_\_\_

**DEFENDANT UNITED PROPERTY AND CASUALTY INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

Defendant United Property and Casualty Insurance Company ("UPC") files this Notice of Removal:

**I. Background**

1. On June 6, 2017, Plaintiffs Caleb and Elizabeth Rabon ("Plaintiffs") filed this lawsuit in Galveston County, Texas, against United Property & Casualty Insurance Company and Nicolas Cepeda.

2. Plaintiffs served UPC with a copy of the Petition on June 7, 2017.

3. Upon information and belief, Nicolas Cepeda ("Cepeda"), has not been served

4. UPC files this notice of removal within 30 days of receiving Plaintiffs' initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

5. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of Matters Being Filed. A copy of the Case Summary Sheet is attached as Exhibit "B." A copy of Plaintiffs' Original Petition and Initial Written Discovery Requests is attached as Exhibit "C." The Civil Case

Information Sheet is attached hereto as Exhibit “D.” A copy of the Request for Issuance of service is attached as Exhibit “E.” A notice of the Status Conference is attached as Exhibit “F” and an e-mail from Sean McCarthy verifying receipt of the Status Conference Notice is attached as Exhibit “G.” A copy of the Citation issued to Nicolas Cepeda is attached as Exhibit “H.” A copy of Citation issued to United Property & Casualty Insurance Company is attached as Exhibit “I” and a copy of the Certificate of Delivery is attached as Exhibit “J.” A copy of United Property & Casualty Insurance Company’s Original Answer to Plaintiffs’ Original Petition is attached as Exhibit “K.” The List of Counsel and Parties to the Case is attached as Exhibit “L,” and a copy of the Declaration of Shannon Beck is attached as Exhibit “M.” A copy of this Notice is also being filed with the state court and served upon the Plaintiffs.

6. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Galveston County, Texas, the place where the removed action has been pending.

## **II. Basis for Removal**

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

### **A. The Proper Parties Are Of Diverse Citizenship.**

8. Plaintiffs are, and were at the time the lawsuit was filed, residents and citizens of Texas.

9. UPC was at the time this action was commenced, and still is, a foreign (Florida) property and casualty insurance company authorized to do business in the State of Texas. UPC is organized under Chapter 982 of the Texas Insurance Code.

10. Upon information and belief, Cepeda is and was at the time the lawsuit was filed, a resident and citizen of the State of Texas. With respect to the claims against Cepeda, it is UPC's position that Cepeda has been fraudulently joined in this action. Therefore, the Texas citizenship of Cepeda should be disregarded for the purposes of evaluating diversity in this matter.

11. When fraudulent joinder is asserted, the Court must "pierce the pleadings" to determine whether a cause of action grounded in fact exists. *Carriere v. Sears, Roebuck & Co.*, 893 F.2d 98, 100 (5th Cir. 1990), *cert. denied*, 498 U.S. 817 (1990). The failure to specify a legal and factual basis for a claim against a non-diverse party constitutes a failure to state a claim and results in fraudulent joinder of that party. *Waters v. State Farm Mut. Auto. Ins. Co.*, 158 F.R.D. 107, 109 (S.D. Tex. 1994).

12. Here, Plaintiffs assert generic claims against Cepeda for violations of the Texas Insurance Code. *See* Pls' Orig. Pet., Exhibit C, ¶¶ 12, 18 and 19. Based on Plaintiffs' pleading, there is no basis for predicting that Plaintiffs might be able to establish liability against Cepeda because no real facts relating to him have been set forth. Plaintiffs' claims against Cepeda consist merely of labels, conclusions, and formulaic recitations of the elements of causes of action. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 127 S. Ct. 1955, 1964-65, 167 L.Ed.2d 929, 940 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1945, 173 L.Ed.2d 868 (2009). As such, Plaintiffs cannot "establish a cause of action against [Cepeda] in state court." *See International Energy Ventures Management, L.L.C.*, 2016 WL 1274030, at \*6-7; *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003) (citing *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5<sup>th</sup> Cir. 1999)); *see also Bianca Tabarestani v. United Prop. & Cas. Ins. Co., et al*, Civil Action No. H-16-712, (S.D. Tex. June 29, 2016) (Werlein, J.); *see also TAJ Properties*,

*LLC v. Zurich American Ins. Co.*, Civil Action No. H-10-2512, 2010 WL 4923473 at \*2 (S.D. Tex. Nov. 29, 2010) (Werlein, J.). Because there is no reasonable basis for this Court to predict that the Plaintiffs might be able to recover against Cepeda, his presence should be disregarded in determining diversity jurisdiction.

13. Because Plaintiff is a citizen of Texas and Defendant UPC is a citizen of Florida, complete diversity of citizenship exists among the proper parties

**B. The Amount in Controversy Exceeds \$75,000.00.**

14. This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiffs allege that Defendants are liable under a residential insurance policy because Plaintiffs made a claim under that policy and Defendants wrongfully adjusted and denied Plaintiffs' claim. Plaintiffs allege that Defendant UPC breached insurance policy number UTH 0219087 00 42, with a Dwelling Limit of \$350,000.00, an Other Structures Limit of \$35,000.00, a Personal Property Limit of \$175,000.00, and a Loss of Use Limit of \$105,000.00, for the property located at 1110 Hawkhill Dr., Friendswood, Texas 77546 (the property giving rise to the present dispute). See Exhibit "M," Beck Declaration, attached hereto and fully incorporated herein by reference. In determining the amount in controversy, the Court may consider "policy limits . . . penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

15. In addition to the amounts sought in this litigation by Plaintiffs through his policy, Plaintiffs' Original Petition alleges that Defendants are liable under various statutory and common law causes of action for consequential damages, statutory penalties, exemplary damages, court costs, and attorney's fees. As such, Plaintiffs' alleged damages greatly exceed \$75,000.00.

### III. Conclusion and Prayer

16. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. UPC hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

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**COUNSEL FOR DEFENDANT**

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**INSURANCE COMPANY**

### **CERTIFICATE OF SERVICE**

This is to certify that on the 7th day of July, 2017, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

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/s/ Rhonda J. Thompson

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